

**KAREN M. VICKERS**, OSB No. 913810

[kvickers@vickersplass.com](mailto:kvickers@vickersplass.com)

Telephone: 503-726-5985

**BETH F. PLASS**, OSB No. 122031

[bplass@vickersplass.com](mailto:bplass@vickersplass.com)

Telephone: 503-726-5975

VICKERS PLASS LLC

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Of Attorneys for Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
MEDFORD DIVISION

RACHEL G. DAMIANO and KATIE S.  
MEDART,

Plaintiffs,

v.

GRANTS PASS SCHOOL DISTRICT 7, an  
Oregon public body; THE MEMBERS OF THE  
BOARD OF EDUCATION OF GRANTS PASS  
SCHOOL DISTRICT 7 – Scott Nelson, Cliff  
Kuhlman, Gary Richardson, Debbie Brownell,  
Cassie Wilkins, Brian Delagrang, and Casey  
Durbin – in their official and personal capacities;  
KIRK T. KOLB, Superintendent, Grants Pass  
School District 7, in his official and personal  
capacity; and THOMAS M. BLANCHARD,  
Principal, North Middle School, Grants Pass  
School District y, in his official and personal  
capacity,

Defendants.

Case No. 1:21-cv-00859-CL

DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR TEMPORARY  
RESTRAINING ORDER

Defendants Grants Pass School District 7 ("District"), Members of the Board of  
Education of Grants Pass School District 7, Kirk T. Kolb, and Thomas Blanchard ("defendants")  
respectfully submit the within response in opposition to plaintiffs' motion for a temporary  
restraining order. Defendants may supplement their response in advance of the current response

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deadline of July 6, 2017 and defendants intend to offer additional argument at the hearing.

## INTRODUCTION

Plaintiffs Rachel G. Damiano and Katie S. Medart are teachers in the defendant Grants Pass School District. Plaintiffs have filed for a temporary restraining order reinstating them to their previous positions and enjoining enforcement of the District's Amended Speech Policy. Plaintiffs' request for reinstatement is not ripe; they are still employed. The request should be denied.

## STANDARDS

A temporary restraining order is an "extraordinary and drastic remedy never awarded as a matter of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Courts balance the competing claims of injury and consider the effect on each party of granting or denying the injunction. A party seeking a temporary restraining order must demonstrate: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest." *Id.* at 20. A plaintiff must prove all four of the elements before a court may issue preliminary relief. *Alliance for the Wild Rockies v. Cottrell*, 632 F3d 1127, 1135 (9th Cir. 2011) (finding that in light of *Winter*, absent a showing of irreparable harm, no balancing of factors is allowable). Thus, regardless of how strong the other elements may be, if a party seeking preliminary relief fails to prove any one of the elements required by *Winter*, the court cannot grant preliminary relief. The injunction "should not be granted unless the movant, by a *clear showing*, carries the

burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

## **BACKGROUND**

Plaintiffs Rachel Damiano and Katie Medart are teachers in the defendant Grants Pass School District (“District”). Plaintiff Damiano is employed by the District as an assistant principal at North Middle School. Plaintiff Katie Medart is employed by the District as a teacher at North Middle School.

In March 2021, plaintiffs posted a 15-minute video of themselves on YouTube related to a political campaign called I Resolve. The video is available at:

<https://www.youtube.com/watch?v=X-pk4FOrBCw> . The video advocates for various school policies on gender identity, use of gender pronouns, and use of bathroom facilities. Both plaintiffs identified themselves by name and as current educators in Southern Oregon.

As with other school districts in Oregon, the District has policies that govern employee conduct. The District has policies regarding use of work time, facilities and equipment, and use of its network for political campaigns. Declaration of Karen M. Vickers, Exhibit 1 (District Policies GBG, IBGR-AR, GCAB). The District also has policies requiring that staff members not disclose confidential information about students on social media. *Id.* An investigation into plaintiffs determined that they had violated some of these policies, among others.

Plaintiffs have not been fired. The District initially placed them on leave in order to investigate the matter. According to its processes, the District’s Chief Finance & Operations Officer, Sherry Ely reviewed the matter and recommended that District Superintendent Kirk Kolb terminate plaintiffs’ employment. Superintendent Kolb held a pre-termination meeting

with each plaintiff. Superintendent Kolb has now recommended that the District school board terminate both plaintiffs' employment. The hearing before the school board is currently set for July 15, 2021. Plaintiffs have the right to have an attorney present and an opportunity to respond and appeal to the board before any final decision is made.

### **ARGUMENT**

Plaintiffs' request for reinstatement is not ripe because they have not been terminated from their positions. District officials have recommended their terminations, but the school board makes the final decision. It may choose to accept the termination recommendation for all or some of the stated reasons, or it may choose not to terminate at all. Plaintiffs' request for reinstatement is not ripe. *See Texas v. United States*, 523 US 226, 300-01 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all" (internal quotation marks omitted)).

### **CONCLUSION**

For the reasons given above, defendants request that the Court deny plaintiffs' motion for a temporary restraining order.

DATED: June 30, 2021.

VICKERS PLASS LLC

s/ Karen M. Vickers

**KAREN M. VICKERS**, OSB No. 913810

[kvickers@vickersplass.com](mailto:kvickers@vickersplass.com)

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